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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No. 4480 of 2007

Date of decision: 31.8.2007

Gurdeep Singh and another **...Petitioners**

Versus

Bhagwan Dass **...Respondent**

CORAM: HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr. Pawan Kumar, Advocate for the petitioners.

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RAJESH BINDAL, J.

Challenge in the present petition, filed under Article 227 of the Constitution of India, is to the order dated August 18, 2007 passed by the Appellate Authority, Ludhiana whereby it had refused amendment of the written statement in the rent petition at the appellate stage as eviction of the petitioner-tenant had already been ordered by the Rent Controller vide order dated April 22, 2005.

The eviction of the petitioner was sought on the ground of personal necessity of the respondent-landlord, who pleaded that premises in dispute is required by him to carry on the business along with his grand son and daughter in law. It was further case of the respondent-landlord that his grand son Munish Kapoor**,** who was student at that time would join in business after completion of his studies. The amendment was sought by the petitioner-tenants to state therein that infact grand son of the respondent-landlord Munish Kapoor, who was employed with HSBC Bank, Ludhiana had been transferred to Noida and further that plea taken by the respondent-landlord that Monika Kapoor, daughter in law of the respondent-landlord wanted to open a Boutique in the premises in question was also false as she had no experience in that. The application moved by the petitioner-tenants was contested by the respondent-landlord taking various pleas, inter-alia,

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that the same is moved with an ulterior motive to delay the proceedings as material facts are already on record and infact similar application was filed by the petitioner-tenants before the Rent controller, which was also dismissed. Further reliance was placed on the judgment of the Hon'ble Supreme court in **M/s Sait Nagjee Puushotham & Co. Ltd. Vs. Vimalabai Prabhulala & Ors 2005 (2) RCR 437** and **Vinay Kumar and others Vs. District Judge, Ghazipur and others 1996(1) Rent Law Reporter 213** to submit that the landlord cannot be expected to sit idle and wait till disposal of the rent petition, so as to prove his personal necessity. In M/s Sait Nagjee Puushotham & Co. Ltd's case (supra), Hon'ble the Supreme Court observed as under:-

> "5. Learned counsel for the appellant submitted that in fact this plea of either starting business or expanding it at Calicut is nothing but sham and it was also pointed out that some of the sons have multifarious activities and are already established in some other business and one of the sons i.e. respondent No. 9 had already gone to United States of America and he has settled there. Therefore, the need is not *bone fide.* We fail to appreciate that when two sons are there and if they want to expand their business at Calicut then it cannot be said that the need is a sham one. It is not possible for the landlords and their sons to wait till the disposal of the case. They have to do something in life and they cannot wait till the appellant is evicted from the premises in question. It is common experience that landlord tenant disputes in our country take long time and one cannot wait indefinitely for resolution of such litigation. If they want to expand their business, then it cannot be said that the need is not *bona fide*. It is alleged that one of the sons of the landords has settled in the U.S.A. That does not detract from the fact that the other sons of landlords want to expand their business at Calicut,

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Indian economy is going global and it is not unlikely that prodigal sons can return back to mother land. He can always come back and start his business at Calicut. On this ground we cannotdeny the eviction of the landlords.

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8. In the case of **Gaya Prasad Vs. Pradeep Srivastava 2001(1) RCR (Rent) 221 (SC) : (2001) 2 SCC 604,** their Lordhsips observed that the landlord should not be penalized for the slowness of the legal system and the crucial date for deciding the *bona fide* of the requirement of the landlod is the date of his application for eviction. Their Lordhsips also observed that the process of litigation cannot be made the basis denying the landlord relief while litigation at least reaches the final stages. However, their Lordships further added that subsequent events may in some situations be considered to have overshadowed the genuineness of the landlord's need but only if they are of such nature and dimension as to completely eclipse such need and make it lose significance altogether."

To similar effect is the judgment in **Pratap Rai Tanwani & another Vs. Uttam Chand & another 2004(2) RCR (Rent) 436 (SC).**

Still further, it is submitted that serious prejudice will be caused to the respondent-landlord in case amendment is allowed at this stage and the same would amount to re-opening of entire issue which is lingering on for the last more than 5 years. Still further relying upon the judgment of Hon'ble Supreme Court in **Shakuntala Bai and others Vs. Narayan Dass and others 2004(1) Rent Control Reporter 580**, it was submitted that crucial date for deciding the bonafide requirement is the date of application. Had it been a case of total eclipse of the requirement of the landlord, the matter would have been different. In the present case grand son of the landlord had already stated that he intended to carry on business

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in the premises in dispute on eviction of the tenant and will resign from his job for the purpose.

Learned Appellate Authority rejected the application for amendment with the following observations:-

> "After considering the arguments raised by counsel for both the parties and going through the application and reply filed by the same, I find that here fact that Munish Kapoor has been transferred in HSBC Bank from Ludhiana to Noida in UP is not a new fact. This Munish Kapoor was a student at the time of filing the petition and he intended to do the business of hosiery in the premises in dispute but since the decision of the rent application takes a long time and thus, it was not possioble for him to wait for such a long time and thus, rightly he has done the job and if he is going high in the job joined by him, it cannot be said that this a new fact. He has already given the undertaking that he will quit the job and do the business alleged in the petition after the premises in dispute are vacated. Already it is alleged in the petition that Monika Kapoor is running the boutique on the back side of the property in question and she has got the experience certificate from GHW knitwear Pvt. Ltd. and these certificates have been proved before the Rent Controller and thus, now it cannot be agitated that the same are fabricated one. It is not a new fact. It is only a matter of argument whether the said certificates are forged and genuine one and the matter is yet to be argued before this Court. The rent petition was filed in the year 1999 i.e. 8 years back and now definitely Bhagwan Dass had grown old by 8 year and it cannot be said to be a new fact that he has shown his age to be lesser than what he is, since it is a matter of evidence which is already on record and this fact can be taken into consideration during the arguments of the present appeal."

Before this Court, learned counsel for the petitioner cited **Hasmat**

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Rai and another Vs. Raghunatah Prasad AIR 1981 SC 1711 to submit that the need of the land-lord must continue and is required to be proved even at the appellate stage and in case the tenant is able to show that need no more exist because of certain subsequent events, he was at liberty and the Appellate Court is certainly entitled to look into the subsequent events. There is no quarrel with the proposition of law laid down. However, at the time of hearing, it could not be disputed by learned counsel for the petitioner-tenants that need in the present case has not eclipsed totally as the statement by the grand son of the respondent-landlord to the effect that he would like to carry on the business in the premises in dispute by leaving his job the moment the same is vacated cannot be brushed aside lightly as held by Hon'ble the Supreme Court in M/s Sait Nagjee Purushotham & Co. Ltd.'s case (supra) that landlord cannot be expected to sit idle and wait indefinitely till the eviction proceedings attain finality. Even on the other issue regarding the need of Monika Kapoor also there is no such event, which has taken place after the eviction order has been passed by the Rent Controller, which could lead to the conclusion that need of the landlord has also ceased to exist. Still further the need of the landlord is also existing. The efforts in the present case clearly seems to be to delay the proceedings.

For the reasons stated above, I do not find any merit in the present petition and the same is dismissed.

August 31, 2007 **(Rajesh Bindal)**
Pka **Judge**

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